IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11624 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUSHPABEN D/O BACHUBHAI HIRA- BHAI INDREKAR (CHHARA)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11624 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging her detention in pursuance of the

order passed against her by Police Commissioner, Ahmedabad City, on 12th of August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 14th of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration a crime registered against the petitioner, before Prohibition Police Station, Eastern Zone, on 11th of August 2004 under the Bombay Prohibition Act. It was alleged that the petitioner was found in possession of 161 bottles of foreign liquor as well as 42 bottles of Beer. Having gone through the investigation papers in the said crime registered against the petitioner, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited foreign liquor and, therefore, the petitioner was bootlegger within the meaning of the PASA Act. The detaining authority reached to the subjective satisfaction that these activities of the petitioner were required to be prevented forthwith and, therefore, the detaining authority after considering other measures which may be taken against the petitioner under the general law, as a last resort, came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention against the petitioner which is under challenge in this petition.

3. Learned Advocate Mr.M.R. Prajapati for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied his mind to the relevant material properly.

5. The grounds of detention discloses that the petitioner was in judicial custody in a crime registered against her when order of detention came to be served upon her on 14th of August, 2004. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody when the order was executed, but in view of the detaining authority, the petitioner was likely to file

application for bail and was likely to be released on bail by the competent authority. The detaining authority also concluded that on so releasing the petitioner on bail, she was likely to continue her illegal activities to disturb the public order.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3767. The Apex Court pleased to observed that there must be cogent materials before the Officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed.

7. In the present case also, going through the material, which is placed on record and relied upon by the detaining authority, it clearly appears that, there was no material on record to infer that the petitioner was likely to file application for bail. That the order of detention can be passed and executed even if the detenu is in judicial custody. Then, in that case, the custody of detenu being the vital fact, the detaining authority must rely upon the cogent and credible material in drawing the inference that the custody of the detenu was likely to end. In the present case, as aforesaid, there was no material to infer that though the petitioner was in judicial custody, was likely to move an application for bail. Like wise, there was total absence of material to infer that on moving such bail application, the petitioner was likely to be released on bail. In this view of the matter, the subjective satisfaction arrived at by the detaining authority that firstly the petitioner was likely to file an application of bail, and secondly on so filing such application, petitioner was likely to be released on bail, in absence of any cogent material, is not legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed on this ground alone.

8. In the result, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City, on 12th of August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Pushpaben D/o Bachubhai Hirabhai Indrekar (Chhara) is hereby

ordered to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

p.n.nair